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IN THE

Supreme Court of the United States

TC HEARTLAND LLC,

Petitioner,

v.

KRAFT FOODS GROUP BRANDS LLC,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF FOR *AMICI CURIAE* ERICSSON INC., ALLERGAN, INC., AND TRAXXAS L.P. IN SUPPORT OF RESPONDENT

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CORPORATE DISCLOSURE STATEMENT

Ericsson Inc. is wholly-owned by Ericsson Holding II Inc., which in turn is wholly-owned by Telefonaktiebolaget LM Ericsson. Telefonaktiebolaget LM Ericsson is publicly held and trades in the United States through American Depository Receipts under the name LM Ericsson Telephone Company.

Allergan, Inc. is a wholly-owned subsidiary of Allergan plc. Allergan plc is a publicly-owned company traded on the New York Stock Exchange under the ticker symbol "AGN."

Traxxas L.P. is a Texas limited partnership. No parent or publicly held corporation owns 10% or more of Traxxas L.P.'s stock.

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INTEREST OF *AMICI CURIAE*

Ericsson Inc. ("Ericsson") is a leading supplier of wireless network equipment, a leading developer of wireless technologies, and both a licensor and licensee of patents in the telecommunications industry. [1] With more than 100,000 employees globally, Ericsson is a pioneer of the modern cellular network. Over 1,000 networks in more than 180 countries use Ericsson equipment, and a significant portion of the world's mobile traffic passes through these networks. Ericsson currently devotes more than 20,000 employees and roughly five billion dollars a year, almost 15% of its net sales, to research and development—and Ericsson's innovations have produced over 37,000 issued patents worldwide. Ericsson employs more than 10,000 people in offices across the United States and supplies network equipment and/or services to every major U.S. telecommunications operator. Ericsson's North American headquarters are in Plano, Texas.

Allergan, Inc. ("Allergan") is a leading, global pharmaceutical company focused on developing, manufacturing, and commercializing pharmaceuticals, devices, and biologic products for

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[1] In accordance with Supreme Court Rule 37.6, *amici curiae* affirm that this brief was not authored, in whole or in part, by counsel to a party, and that no monetary contribution to the preparation or submission of this brief was made by any person or entity other than *amici curiae* and its counsel. The parties have consented to the filing of this brief, either by express written consent or by filing a letter documenting consent with the Court.

patients in the United States and around the world. Allergan markets a portfolio of leading brands and best-in-class products for the central nervous system, eye care, medical aesthetics, dermatology, gastroenterology, women's health, urology, and anti-infective therapeutic categories. With more than 16,000 employees, Allergan is creating one of the broadest pharmaceutical development pipelines in the industry. Allergan has offices and facilities in various cities around Texas.

Traxxas, L.P. ("Traxxas") designs, engineers and sells radio controlled vehicles and is headquartered in McKinney, Texas. Traxxas has been engineering and building the world's fastest and most innovative radio-controlled performance machines since 1986, and is the number-one selling name in ready-to-run nitro and electric radio controlled vehicles.

As both licensors and licensees of numerous patents, *amici curiae* have an interest in federal courts' predictable and consistent application of the venue statutes to patent infringement lawsuits which, for nearly three decades, have defined a corporation's "residency" by reference to 28 U.S.C. § 1391(c).

SUMMARY OF THE ARGUMENT

This case presents the simple question of whose law controls: Congress's definition of "reside" "for all venue purposes," which is contained in the current version of 28 U.S.C. § 1391(c); or the common-law definition applied in *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222 (1957), in which this Court interpreted a now-superseded version of the general venue statute. That venue statute has been amended

twice since *Fourco*, most recently in 2011. *Amici curiae* urge this Court to apply the plain language of Congress's amended statute, and to eschew Petitioner's invitation to legislate from the bench under the guise of statutory ambiguity. Because no such ambiguity exists, Petitioner's sought-after remedy—drastically narrowing possible venue for patent cases—lies with Congress alone.

Amici will not belabor Respondent's able analysis of the statutory text. Rather, *amici* submit this brief principally to respond to Petitioner's complaints that forum-shopping, "patent trolls," and alleged "abuses" of patent litigation—including a concentration of patent cases in the Eastern District of Texas, among other districts—justifies revamping the venue rules that have applied to patent cases since the 1988 amendments to § 1391(c) and *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574 (Fed. Cir. 1990), *cert. denied*, 499 U.S. 922 (1991). Petitioner's effort to convert the instant appeal into a referendum on case management practices in the Eastern District of Texas is misplaced.

Even if this Court were the proper forum for airing Petitioner's policy arguments—which it is not—public data belies Petitioner's claim that the Eastern District of Texas is disproportionately out-of-sync with the rest of the federal bench when it comes to patent cases. The Eastern District of Texas has one of the heaviest patent dockets in the nation, which stands to reason as its judges are highly experienced in patent law and have a deserved reputation for resolving disputes expeditiously. Importantly, that court's litigation statistics—including plaintiff win rates, patent invalidation

rates, damages awards, and transfer orders, among others—are in line with national averages, as well as those from other patent-heavy districts such as the District of Delaware, the Central District of California, and the Northern District of California. There is no measurable basis to conclude that the Eastern District of Texas is less favorable to defendants. Nor are there empirical grounds for shrinking that court's patent docket by applying a 125-year-old common law understanding of residency in lieu of § 1391(c)'s express definition.

Moreover, narrowing the definition of "resides" for purposes of venue in patent cases would not address the perceived over-burdening of certain patent dockets. As § 1400(b) contains no definition of "resides," Petitioner's position would resurrect common law to equate residence with the state of incorporation. If the Court were to adopt this judicial gloss on venue, a significant proportion of patent litigation would simply shift to Delaware, a popular locus of incorporation.

As "the purpose of statutorily specified venue . . . is to protect . . . against the risk that a plaintiff will select an unfair or inconvenient place of trial," funneling patent cases to the defendant's state of incorporation—regardless of where it actually does business—makes little pragmatic sense. *Leroy v. Great W. United Corp.*, 443 U.S. 173, 183-84 (1979). This Court should respect the legislature's prerogative to fashion venue for federal courts, and apply the plain language of § 1391(c) in this case.

ARGUMENT

I. Petitioner's Attacks On The Eastern District Of Texas Are A Red Herring.

Petitioner and its supporting *amici curiae* take pains to paint the Eastern District of Texas as a menacing influence on patent litigation that justifies venue reform by this Court. As explained below, however, such arguments are belied by public data regarding case management in the Eastern District of Texas.

A. There Are Many Legitimate Reasons Why Patent Holders Choose A Particular Forum, Including The Eastern District Of Texas.

As a threshold matter, the assumption that the concentration of patent cases in a subset of district courts is indicative of a problem needing to be solved overlooks the many legitimate reasons why patent holders choose one forum over another. During oral arguments in the Federal Circuit in *TC Heartland*, Judge Kimberly A. Moore noted that there are significant benefits to having patent cases concentrated in a few jurisdictions. Patent cases are complex, and the courts that hear most of them—including the Eastern District of Texas—have become particularly skilled at patent law.[2]

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[2] Recording of 2016-0105 Oral Argument, at 23:20-25:50, available at, http://www.cafc.uscourts.gov/oral-argument-recordings/search/audio.html.

Local Rules. Indeed, as a result of its patent-heavy docket, the Eastern District of Texas has formulated local patent and discovery rules that foster the timely and efficient adjudication of patent suits, and prevent litigants from unduly delaying final judgment. The court requires early disclosure of infringement theories, invalidity theories, and claim constructions,[3] for example, and in many cases judges in the Eastern District of Texas rule on preliminary claim constructions immediately prior to *Markman* hearings.

Resolution Speed. Overall, pre-trial proceedings for patent cases in the Eastern District of Texas are shorter than in other federal district courts. Civil docket delay has long been considered "a serious problem" in the federal courts, giving rise to so-called "rocket dockets" such as the Eastern District of Virginia, which "set[] early, firm trial dates at the outset of proceedings, and generally allow[] modification of such dates only for good cause."[4] While carrying the highest weighted caseload per judgeship nationwide (1,200 cases),[5] the Eastern District is the only federal court in Texas with no judges listed on the lawyers' annual "Slowpoke

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[3] A claim construction hearing (also known as a "*Markman* hearing") is a pretrial hearing in a patent suit during which the judge examines evidence from all parties on the appropriate meanings of relevant key words used in a patent claim.

[4] Carrie E. Johnson, *Rocket Dockets: Reducing Delay in Federal Civil Litigation*, 85 CAL. L. REV. 225, 225 (1997).

[5] This figure represents all cases, not just patent cases.

Report" for cases lasting over three years or motions pending over six months.[6] This is so despite the fact that three out of its eight district court judgeships are vacant. Courts have recognized that such "efficient administration of the court system" serves the interests of justice.[7] Thus, in patent litigation, the relative absence of undue delay is a reasoned and legitimate basis for filing cases in the Eastern District of Texas.

Moreover, for each of the last five years, the average wait time leading up to a jury trial in the Eastern District of Texas (850 days) was shorter than in the Northern District of California (913 days), the District of Delaware (878 days), the Central District of California (910 days), and the national average (923 days).[8] The data is comparable for bench trials. Over the same period, the Eastern District of Texas's average wait time for a bench trial in patent cases

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[6] John Council, *The Slowpoke Report: Vacancies, Crushing Caseloads Take Toll on Texas Bench*, TEXAS LAWYER (Feb 1, 2017) http://www.texaslawyer.com/id=1202776937994/The-Slowpoke-Report-Vacancies-Crushing-Caseloads-Take-Toll-on-Texas-Bench.

[7] *See, e.g., Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 220 (7th Cir. 1986) ("[T]he 'interest of justice' is a separate component of a § 1404(a) transfer analysis, and may be determinative in a particular case . . . Factors traditionally considered in an 'interest of justice' analysis relate to the efficient administration of the court system, such as likelihood of a speedy trial.") (internal citations and quotations omitted).

[8] Lex Machina, http://lexmachina.com. Patent cases were examined that terminated from February 8, 2012 to February 12, 2017 with "Jury Trial" tags.

(677 days) was faster than in the Northern District of California (917 days), the Central District of California (971 days), the District of Delaware (744 days), and the national average (796 days).[9] By contrast, both the Northern and Central Districts of California's time-to-trial averages for jury trials and bench trials were significantly longer than in other patent-heavy districts and as compared to the national average.

The length of actual trials in patent cases filed in the Eastern District of Texas is also shorter on average than in other patent-heavy districts. From January 1, 2000 until June 20, 2011, the average number of days for a jury trial in a patent case in the Eastern District of Texas (6.18 days) was half as long as the Northern District of California (12.67 days).[10] The Eastern District of Texas also handled jury trials more expeditiously than the District of Delaware (7.96 days), the Central District of California (8.24 days), and the national average for all federal district courts (8.6 days).[11] Likewise, the average number of days for a bench trial in a patent case in the Eastern District of Texas (3.6 days) was shorter than in the Northern District of California (5.5 days), the Central District of California (3.75 days), the District of

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[9] *Id.* Patent cases were examined that terminated from February 8, 2012 to February 12, 2017 with "Bench Trial" tags.

[10] Mark A. Lemley, Jamie Kendall & Clint Martin, *Rush to Judgment? Trial Length and Outcomes in Patent Cases,* 41 AIPLA Q.J. 169 (2013).

[11] *Id.*

Delaware (5.08 days), and in comparison to the national average (5.74 days).

Expertise. It is without question that the Eastern District of Texas's judges are experts in patent law. As regular attendees at patent law bar association meetings and conferences, judges in the Eastern District of Texas have a national reputation as experienced patent law jurists.

Given the heavy load of patent cases in the Eastern District of Texas, the district's courtroom staff is also highly skilled. The Eastern District of Texas hires independent technical advisors in patent cases to help with claim construction and other issues, such as summary judgment motions. It also employs technically trained law clerks and other courtroom staff with particular interest in patent litigation. Moreover, Federal Circuit Court judges regularly hear cases at the district court level (*e.g.*, Judges Bryson and Dyk). Reciprocally, judges in the Eastern District of Texas sit by designation on the Federal Circuit (*e.g.*, Judges Ward, Gilstrap, Davis, and Clark).

As a consequence of the Eastern District of Texas's particular expertise in patent law, the court was included in the "Patent Pilot Program" established under the Leahy–Smith America Invents Act of 2011 with the express goal of developing specialized expertise among the federal judiciary in patent law.[12] The Administrative Office of the U.S.

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[12] *See* Ron Vogel, *The Patent Pilot Program: Reassignment Rates and the Effect of Local Patent Rules*, available at

Courts selected only fourteen federal districts to participate in the Patent Pilot Program. The implication, therefore, that the Eastern District of Texas is unduly steeped in patent cases does not hold water. The intent behind the Patent Pilot Program was to enhance the patent expertise of judges participating in the program, including those in the Eastern District of Texas.

In sum, litigants file patent infringement suits in the Eastern District of Texas because its judges possess especially deep expertise adjudicating patent suits—not for nefarious reasons that undermine fairness and judicial even-handedness, as Petitioner and its supporting *amici* would suggest. Plaintiffs and defendants alike can expect efficient case management procedures and consistent substantive rulings from judges presiding over patent cases in the Eastern District of Texas.

B. Data Shows That The Eastern District Of Texas Is On Par With National Averages Regarding Key Litigation Statistics.

Although irrelevant to the question of statutory interpretation presented here, the policy arguments presented by Petitioner and its supporting *amici curiae* boil down to an assumption that the Eastern District of Texas is "better for patent plaintiffs and

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http://www.fr.com/files/Uploads/Documents/Vogel.NYIPLABulletin.Pilot-Patent-Program-Reassignment-Rates-and-Effects-of-Local-Rules.OctNov2013.pdf.

worse for patent defendants."[13] In particular, they argue that patent plaintiffs seek out the Eastern District of Texas because "local rules and procedural orders tilt in their favor."[14] Compared to other patent-heavy districts and federal district courts in general, however, the Eastern District of Texas is on par regarding numerous litigation metrics, including plaintiff win rates, patent invalidation rates, damages awards, dispositive motions, affirmance rates, settlement, stays, and transfers.

Plaintiff Win Rates. The Eastern District of Texas has consistently had nearly identical patent plaintiff win rate percentages as the national average. Over the last five years (42%), three years (44%), and one year (47%), the Eastern District of Texas was within a maximum of five percentage point of the national average for each time period (42%, 41%, and 42%, respectively).[15] By comparison, the Northern District of California had lower plaintiff win rates during each respective time period (25%, 24%, and 28%).[16] This data helps explain why large

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[13] Petitioner's Brief at 16; *see also* Brief for Texas *et al.* as *Amicus Curiae* Supporting Petitioners ("Texas's *Amicus Curiae* Brief") at 9-13.

[14] Texas's *Amicus Curiae* Brief at 9.

[15] Lex Machina, http://lexmachina.com. Analyzing claimant win rates for cases that were terminated between February 8, 2012 and February 8, 2017. The patent plaintiff win rate percentages exclude likely settlements, default judgments, uncontested dismissals, consolidation, severance, transfers, and stays.

[16] *Id.*

technology companies, many of which are based in the Northern District of California, urge this Court to confine venue in patent cases to a defendant's home district (where it has committed acts of infringement and has a regular an established place of business under § 1400(b)) or to the place of incorporation under *Fourco*. There is no evidence that the statistical differences between the Eastern District of Texas and the Northern District of California reflect unfairness in either forum, although it does explain the self-interests at play here.

As for a patent plaintiff's chance of winning a jury trial in particular, the data again lines up as between the Eastern District of Texas and other patent-heavy districts. For the last five years, the Eastern District of Texas's jury trial win rate for patent plaintiffs (65%) was approximately the same as the national average (64%), the District of Delaware (65%), the Northern District of California (63%).[17]

Patent Invalidation Rates. In defending a patent infringement case, "an accused infringer 'may prevail . . . by successfully attacking the validity of the patent.'" *Commil USA, LLC v. Cisco Sys., Inc.*, 135 S. Ct. 1920, 1928 (2015) (quoting *Deposit Guar. Nat. Bank v. Roper*, 445 U.S. 326, 334 (1980)). As for the defense of invalidity, the burden "rest[s] on the

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[17] *Id.* Patent plaintiff jury win rates were calculated by reviewing win percentages for cases with "jury trial" tags, excluding likely settlements, default judgments, procedural uncontested dismissals, consolidation, severance, transfers, and stays.

party asserting such invalidity" by "clear and convincing evidence." *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 95 (2011). Despite Petitioner's suggestion that the Eastern District of Texas favors plaintiffs, litigants in both the Eastern District of Texas and the District of Delaware can expect defense victories via patent invalidation at approximately the same rate as the national average, taking into account all forms of judgment through the completion of trial. By contrast, plaintiffs litigating in the Northern District of California had their patents invalidated at nearly twice the rate as the national average.

More specifically, while the Eastern District of Texas invalidated nearly one-sixth (17.43%) of all patents over the last five years, which is within one percentage point of the invalidation rate nationally (17.52%), and within 1.5 percentage points of the Central District of California (17.97%), the Northern District of California invalidated nearly one-third of all patents (30.1%).[18] Because the rate of patent invalidation in the Eastern District of Texas is on par with the national average as well as that of the Central District of California, there is no empirical basis to argue that the invalidation rate in the Eastern District of Texas is unfairly low.

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[18] Lex Machina, http://lexmachina.com. Invalidity rulings were analyzed by comparing invalidity rulings to total case determinations between February 8, 2012 and February 8, 2017, excluding likely settlements, default judgments, uncontested dismissals, consolidation, severence, transfers, stay and multidistrict ligitation.

Damages Awards. Petitioner's supporting *amici curiae* further argue that patent holders file suit in the Eastern District of Texas for the "distinct possibility of massive damages."[19] Yet over the last five years, the Eastern District of Texas had a median patent damage award ($7,160,886) that was less than those of both the Northern District of California ($8,854,470) and the District of Delaware ($13,270,000).[20] The data on damages awards thus shows that it is statistically more advantageous for patent holders to file suit in the District of Delaware than in the Eastern District of Texas.

Dispositive Motions. Petitioner's supporting *amici curiae* also suggest that dismissal and/or summary judgment in favor of patent defendants is not adequately available in the Eastern District of Texas. Over the past five years, the Eastern District of Texas has granted motions to dismiss in patent cases at a rate of 32% percent, and motions for summary judgment at a rate of 21%, whereas the national averages for granting motions to dismiss and motions for summary judgment in patent cases were 45% and 34%, respectively.[21]

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[19] *See, e.g.*, Texas's *Amicus Curiae* Brief at 12.

[20] Lex Machina, http://lexmachina.com. Cases were examined from February 8, 2012 to February 8, 2017. The median was used instead of the mean in calculating the damage award statistics to minimize the effect of outlier judgments.

[21] *Id.* Lex Machina motions metric report was used to analyze claimant win rates for summary judgment and motions to dismiss (contested) for patent cases that were terminated between February 8, 2012 and February 8, 2017.

While it is clear that the Eastern District of Texas grants dispositive motions in patent cases, the comparative statistics—standing alone—are not a fair indictment of the judges in the Eastern District of Texas. To be sure, "summary judgment avoids the time and expense of trial, [and thus] appeals to commentators who prize efficiency."[22] But as noted above, judges in the Eastern District of Texas are notoriously efficient and timely in their management of an especially heavy patent-related docket. The fact that some patent defendants grouse about how readily judges in the Eastern District of Texas grant dispositive motions is of little consequence here.[23]

Affirmance Rates. Notably, the Eastern District of Texas's decisions in patent cases are affirmed at the same rate as the other patent-heavy districts.[24] This holds true regardless of whether a jury or judge decided the case. For cases decided by jury verdict, the Federal Circuit affirms, at least in part, nearly the same percentage of cases from the

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[22] John Bronsteen, *Against Summary Judgment*, 75 GEO. WASH. L. REV. 522, 524 (2007).

[23] *Amicus curiae* Texas erroneously argues that letter briefs are required to be filed before summary judgment motions in the Eastern District of Texas. *See* Texas's *Amicus Curiae* Brief at 10. Judges in the Eastern District of Texas do not uniformly require the filing of letter briefs prior to a full motion for summary judgment. Judge Gilstrap ceased the practice in July 2016. In any event, litigants may benefit from letter briefs, as they winnow down the issues for summary judgment, enabling more focused briefing by the parties.

[24] All appeals from federal district court patent cases are heard by the Federal Circuit.

Eastern District of Texas (84%) as from the Northern District of California (80%) and the District of Delaware (86.1%). [25] When reviewing bench determinations (*e.g.*, bench trials, motions to dismiss, summary judgment motions, *etc.*), the Federal Circuit also affirms, at least in part, approximately the same percentage of decisions from the Eastern District of Texas (82.1%) as from the Northern District of California (89.2%) and the District of Delaware (87.3%).[26]

Settlement. Petitioner's supporting *amici curiae* further contend that the relatively lower rates of dismissal and summary judgment in the Eastern District of Texas result in so-called "patent trolls" filing "nuisance lawsuits" there on the assumption that the threat of trial will force defendants to settle rather than incur steep legal defense costs.[27] But the data does not bear this out. For the last five years, the percentage of patent cases that resulted in settlement in the Eastern District of Texas (86%) was only marginally higher than that of the District of

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[25] *See* LegalMetrics, Nation Patent Litigation Report (April 2015) (reporting affirmance rates from January 1991 through April 2015). The Central District of California had a much lower affirmance rate (63.15%).

[26] *Id.* Again, the Central District of California was affirmed less often (67%) than the other patent litigation heavy districts.

[27] *See, e.g.*, Texas's *Amicus Curiae* Brief at 12-14.

Delaware (79%), as well as the national average (77%).[28]

In any event, Petitioner's attack on the settlement differential in the Eastern District of Texas is at odds with the policy objectives animating federal procedure. Specifically, the purpose of pre-trial offers of judgment under Fed. R. Civ. P. 68 is "to encourage the settlement of litigation." *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981). The Eastern District of Texas's settlement rate is thus consistent with the spirit of Rule 68, which "provides an additional inducement to settle in those cases in which . . . the amount of recovery is uncertain." *Id.*

Stays. The Eastern District of Texas also regularly stays patent lawsuits in three circumstances: (i) an *inter partes* review ("IPR");[29] (ii) reexamination proceedings by the U.S. Patent and Trademark Office ("USPTO");[30] and/or (iii) the

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[28] Lex Machina, http://lexmachina.com. Data collected from "case outcomes" classified as "likely settlements."

[29] An IPR is a proceeding conducted by the Patent Trial and Appeal Board to review the patentability of one or more claims in a patent. Patent defendants often commence IPR proceedings after a patent suit is filed in order to challenge the patentability of the patent-in-suit.

[30] A reexamination proceeding is a process whereby a patent is reexamined by a patent examiner to verify that the subject matter it claims is patentable. A request for reexamination can be filed by anyone at any time during the period of enforceability of the patent, including by a patent defendant after the commencement of a patent suit.

resolution of litigation that was first filed in another venue.

Contrary to the claims of *amici curiae* American Bankers Association, *et al.*,[31] courts in the Eastern District of Texas "have been nearly uniform in granting motions to stay" following the initiation of an IPR. *Cellular Comms. Equip. v. Samsung Elecs. Co.*, No. 6:14-cv-759, Dkt. 154 at *5 (E.D. Tex. Dec. 16, 2015) (Mitchell, J.).[32] From January 1, 2015 through February 12, 2017, for example, the Eastern District of Texas granted 46 stays pending both pre- and post-institution IPRs, amounting to a grant rate of 63%.[33] By comparison, during this same time period the District of Delaware granted stay requests 60% of the time.[34]

The Eastern District of Texas also routinely grants stays pending reexamination proceedings by the USPTO. Motions for such stays filed between January 1, 2015 and February 12, 2017 were granted

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[31] Brief for American Bankers' Association, *et al.* as *Amici Curiae* Supporting Petitioners, at 9-10.

[32] *See also*, *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 U.S. Dist. LEXIS 29573, at *17–18 (E.D. Tex. Mar. 11, 2015) (Bryson, J.) (recounting "Congress's desire to enhance the role of the PTO and limit the burden of litigation on courts and parties" through the less burdensome IPR process).

[33] Docket Navigator, https://www.docketnavigator.com/browse/results/34db2b6f-ef9c-04ba-a8c0-6812fd09b33b (last visited Feb 14, 2017) (running search for "Document Type: Motion to Stay Pending *Inter Partes* Review").

[34] *Id.*

50% of the time.[35] During this same time period, the District of Delaware granted stay requests 53% of the time.[36] The Eastern District of Texas also granted 84.6% of motions to stay pending resolution of related cases from January 1, 2015 through February 12, 2017, while the District of Delaware granted 85.7% of requested stays.[37] The national average for all federal district courts during this time period was 82.8%.[38]

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[35] Docket Navigator, https://www.docketnavigator.com/browse/results/b95eaf45-7964-4e15-361d-0e9098563029 (last visited Feb 14, 2017) (running search for "Document Type: Motion to Stay Pending Reexamination"); *see Synqor, Inc. v. Vicor Corp.*, No. 2:14-cv-00287 (E.D. Tex. May 23, 2016); *ExitExchange Corp. v. FriendFinder Network, Inc.*, No. 2:13-cv-00396 (E.D. Tex. Jan. 14, 2015).

[36] Docket Navigator, https://www.docketnavigator.com/browse/results/b95eaf45-7964-4e15-361d-0e9098563029 (last visited Feb 14, 2017) (running search for "Document Type: Motion to Stay Pending Reexamination").

[37] From January 1, 2015 through February 12, 2017, a stay was granted by Eastern District of Texas 22 times. Docket Navigator, https://www.docketnavigator.com/browse/results/55cd3478-0361-5449-7dab-83f0c9c6aca1 (last visited Feb. 14, 2017) (running search for "Document Type: Stays Pending Resolution of Related Proceedings"); *see also Global Equity Mgmt. (SA) PTY Ltd. v. Ericsson Inc.*, No. 2:16-cv-00618 (E.D. Tex. Jan. 25, 2017) (Payne, J.) (holding that "Amazon's E.D. Va. DJ action shall proceed first, while the 21 GEMSA E.D.T.X. suits shall be stayed, pending resolution" of Amazon's Virginia suit).

[38] Docket Navigator, https://www.docketnavigator.com/browse/results/55cd3478-0361-5449-7dab-83f0c9c6aca1 (last visited Feb. 14, 2017) (running search for "Document Type: Stays Pending Resolution of Related Proceedings").

Transfers. Petitioner's supporting *amici curiae* also err in asserting that the Eastern District of Texas lags behind in granting transfer motions.[39] Federal courts across the country grant motions to transfer patent cases at approximately equivalent rates, with slightly higher percentages in patent-heavy districts. Over the last five years, for example, the Eastern District of Texas and the Northern District of California granted transfer motions at approximately identical rates (72% and 71%, respectively).[40] Additionally, the U.S. Court of Appeals for the Federal Circuit hears petitions for writ of mandamus filed by defendants whose transfer motions are denied.[41]

In short, as an empirical matter, Petitioner's critique of the Eastern District of Texas is misplaced. Nothing about that court is irregular or improper.

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[39] *See, e.g.,* Texas's *Amicus Curiae* Brief at 11-12.

[40] Lex Machina, http://lexmachina.com. LexMachina Motion Metrics Report was used to analyze all patent cases not classified as "likely settlement" that terminated between February 8, 2012 and February 8, 2017.

[41] *See, e.g., In re TS Tech U.S. Corp.*, 551 F.3d 1315, 1323 (Fed. Cir. 2008) (granting petition for writ of mandamus and transferring case to the United States District Court for the Southern District of Ohio); *In re Microsoft Corp.*, Misc. No. 944, 2010 U.S. App. LEXIS 23121, at *10 (Fed. Cir. 2010) (granting petition for writ of mandamus and transferring case to the United States District Court for the Western District of Washington).

II. Because § 1391(c) Is Clear, This Court Must Reject Petitioner's Invitation To Legislate Under The Guise Of Statutory Interpretation.

Petitioner and its supporting *amici curiae* nonetheless raise additional policy arguments in an attempt to convince the Court to override the plain language of § 1391(c). In particular, they argue that thirty years of precedent applying § 1391(c) to an ambiguous term in § 1400(b) should be abandoned because plaintiffs tend to forum shop if they have too many venue options. Such policy arguments are for the legislative branch, and have no bearing on the straightforward reading of the statutory language at issue in this case.

A. Obsolete Case Law Construing Old Statutes Cannot Justify A Judicial Override Of § 1391(c)'s Definition Of "Resides" "For All Venue Purposes."

A foundational principle of statutory interpretation is that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (internal citations and quotations omitted). Because the venue statutes at issue here are unambiguous, the Court's only role is to enforce the straightforward framework set up by Congress, not to engage in any policy "fix" advocated by Petitioner. *Malley v. Briggs*, 475 U.S. 335, 342 (1986) ("Our role is to interpret the intent of Congress [], not to make a

freewheeling policy choice."); *Finn v. Meighan*, 325 U.S. 300, 303 (1945) ("That being the policy adopted by Congress, our duty is to enforce it.").

The statutory scheme for venue in patent cases is surely familiar to this Court. Section 1400(b) specifies that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant *resides*," but it does not define that term. (Emphasis added). Congress revised and recodified both § 1400(b) and § 1391(c) in 1948. *Fourco Glass Co.*, 353 U.S. at 223. The version of § 1391(c) that governed in *Fourco* was titled "Venue generally" and it applied "for venue purposes." As a result, the *Fourco* Court held that § 1391(c) did not supplement § 1400(b), and that for purposes of applying § 1400(b), courts should equate "resident" with "inhabitant," which—under *Shaw v. Quincy Mining Co.*, 145 U.S. 444, 450 (1892)—"mean[t] the state of incorporation only." *Fourco Glass Co.*, 353 U.S. at 226.

In 1988, Congress changed this formula by amending § 1391(c) to define a defendant corporation's "residency" as "any judicial district in which such defendant *is subject to the court's personal jurisdiction*." (Emphasis added). It also explicitly made this definition apply *"[f]or purposes of venue under this chapter,"*[42] i.e., Chapter 87, which contains § 1400. (Emphasis added). Thus, consistent with its constitutional prerogative, Congress in 1988

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[42] 28 U.S.C. § 1391(c) (emphasis added). The original text, the post-1988, and the post-2011 versions of this section, as well as § 1400 and the accompanying Chapter 87 table of contents, are included in Appendix A to this brief.

rendered *Fourco* obsolete and replaced *Shaw*'s default definition of corporate residency in patent suits with § 1391(c)'s personal jurisdiction standard. Two years later, in *VE Holding*, the Federal Circuit concluded that § 1391(c)'s definition of "resides" applied to § 1400(b). *VE Holding*, 917 F.2d at 1580.[43]

Just as *VE Holding* rebuffed efforts to superimpose *Fourco* on the 1988 amendments, this Court should reject Petitioner's plea to judicially refashion the 2011 amendments. Numerous bills have been proposed in Congress for limiting venue in patent actions, but none have become law.[44] As with the 1988 amendments, Congress was no doubt aware that it could have excepted patent cases from "all venue purposes" in 2011, but instead chose to leave in place the nearly thirty years of precedent applying § 1391(c) to determine corporate residence for

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[43] The *VE Holding* court rejected the argument that *Fourco* permanently delinked § 1400(b) from § 1391(c), explaining that "Section 1391(c) as it was in *Fourco* is no longer," and that "[w]e now have exact and classic language of incorporation: 'For purposes of venue under this chapter.'" 917 F.2d at 1579. "Congress could readily have added 'except for section 1400(b),' if that exception, which we can presume was well known to the Congress, was intended to be maintained." *Id.*

[44] *See generally* J. Jonas Anderson, *Patent Dialogue*, 92 N.C. L. REV. 1049, 1070-71 (May 2014) (noting that "[a]t various times, Congress proposed fundamental changes to . . . the patent venue statute," but they were not included in "the most comprehensive legislative reform of U.S. patent law in nearly sixty years," the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (codified as amended at 35 U.S.C. §§ 102, 282 (2012))).

purposes of venue in patent cases.[45] This Court should accordingly conclude that "'all' means all" in § 1391(c), and affirm the decision below. *Cty. of Oakland v. Fed. Housing Fin. Agency*, 716 F.3d 935, 940 (6th Cir. 2013) (quotations omitted).

Petitioner's proposed judicial override of Congress would only cause mischief requiring further judicial intervention. For example, ignoring § 1391(c) with respect to § 1400(b) would make venue over foreign defendants undefined (and perhaps impossible) by reading out the specification of residency with respect to foreign defendants in § 1391(c)(3). Moreover, a question would arise as to whether § 1391(c) should also be ignored in determining venue in copyright cases under § 1400(a), which states that venue for actions "relating to copyrights . . . may be instituted in the district in which the defendant or his agent resides or may be found." These example problems show that the thorough statutory framework put in place by Congress, including by way of the 1988 and 2011 amendments, cannot and should not be disrupted by courts, as urged by Petitioner.

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[45] Contrary to Petitioner's argument, the phrase "[e]xcept as otherwise provided by law," added to § 1391(a) by the 2011 amendments, does not support resurrecting *Fourco*. Simply put, *Fourco* was not the law in 2011. Rather, in 1988, Congress had already abrogated *Fourco* by specifying that § 1391(c)'s definition of corporate "residency" applied "for purposes of venue under this chapter," which expressly included § 1400. This was the law just prior to the 2011 amendments, not *Fourco* from 1957 interpreting different statutory language.

B. Petitioner's Forum Shopping Arguments Are Irrelevant To The Task Before The Court.

Petitioner nevertheless urges the Court to rewrite longstanding venue rules in patent cases in order to alter litigation practices like forum shopping. This argument is inapposite. In numerous areas of federal practice, including patent law and bankruptcy law, scholars and legislatures have grappled with the perceived evils of forum shopping for years.[46] And although forum shopping is an appropriate consideration for courts applying the *Erie* doctrine in the event of a conflict between state and federal law, "we deal here with a congressional statute apportioning the business of the federal courts." *Van Dusen v. Barrack*, 376 U.S. 612, 637 (1964) (superseded by statute on other grounds). There is no judicial leeway to rewrite the law in an effort to apportion court business differently. "The short of the matter is that a Federal Rule governing procedure is valid whether or not it alters the outcome of the case in a way that induces forum shopping." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins Co.*, 559 U.S. 393, 416 (2010). Forum shopping arguments are thus irrelevant to the question whether "all" means "all" in

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[46] *See, e.g.*, Kimberly A. Moore, *Forum Shopping in Patent Cases: Does Geographic Choice Affect Innovation*, 74 N.C. L. REV. 889 (2001); Lynn M. LoPucki & William C. Whitford, *Venue Choice and Forum Shopping in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 1991 WIS. L. REV. 11 (1991).

§ 1391(c). "To hold otherwise would be to 'disembowel either the Constitution's grant of power over federal procedure or Congress's exercise of it.'" *Shady Grove*, 559 U.S. at 416 (quoting *Hanna v. Plumber*, 380 U.S. 460, 472-73 (1965)).

Moreover, a reversion to *Fourco*'s common law definition could create its own case management problems, along with numerous unforeseen consequences on U.S. corporations across the country. In December 2015, for example, Texas-based Ericsson filed suit against the California-based Apple, Inc. ("Apple") in the Eastern District of Texas, alleging that Apple's products infringed multiple Ericsson patents relating to wireless communication technology essential to Ericsson's business. [47] If Petitioner prevails, companies may no longer be able to seek redress for patent infringement in their home districts. Ericsson could be forced to file suits against Silicon Valley competitors in the Northern District of California or the District of Delaware. Not only would this revamping of venue law impose increased burdens on the patent-heavy dockets of those courts, it could sow doctrinal inconsistencies in the wake of three decades of personal jurisdiction-based venue in patent cases.[48] As such, it should be considered and addressed—if at all—by Congress, not the courts.

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[47] *Ericsson Inc. et al v. Apple Inc.*, No. 2-15-cv-00293 (E.D. Tex. Feb 26, 2015).

[48] *See also, e.g., 3M v. HM Elecs.*, No. 0:12-cv-00553 (D. Minn., Mar. 2, 2012) (a case where plaintiff 3M would have been forced to litigate in the Southern District of California instead of the District of Minnesota under Petitioner's proposed reading of

C. Petitioner's "Patent Troll" Rhetoric Is Extraneous And Should Be Ignored.

Petitioner's supportive *amici curiae* go on to claim that employing § 1391(c)'s definition of "resides" for all venue purposes, including in patent cases, contributes to the "patent troll" nuisance value problem.[49] In particular, they argue that defendants are more apt to settle meritless patent suits in the Eastern District of Texas because it is cheaper than going to trial there. Nuisance value lawsuits are hardly unique to the Eastern District of Texas, however.[50] The tactic of filing suit in the hopes of achieving a favorable damages award is available in any court in virtually any type of case. And as discussed above, the Eastern District of Texas has a settlement rate that is only marginally above the national average.

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§ 1400(b)); *Westech Aerosol Corp. v. Newstar Adhesives*, No. 3:17-cv-05082 (W.D. Wash. Feb. 2, 2017) (a case where plaintiff Westech Aerosol Corporation, which is incorporated and based in Washington, would have been forced to litigate in the District of Delaware instead of the Western District of Washington under Petitioner's proposed reading of § 1400(b)).

[49] Texas's *Amici Curiae* Brief at 13; Brief for American Bankers' *et al.* as *Amici Curiae* for Petitioner, at 16-17.

[50] The assumption that so-called "patent trolls" are bad for industry is not uniformly accepted. *See* Clifton B. Parker, *Patent Trolls Serve Valuable Role in Innovation, Stanford Expert Says*, STANFORD NEWS (Feb. 23, 2015), http://news.stanford.edu/2015/02/23/haber-patent-trolls-022315/ (last visited March 5, 2017).

Indeed, the data does not back up *amici*'s suggestion that the Eastern District of Texas is a renegade court run amok in patent cases. In 2016, 34% fewer patent cases were filed in the Eastern District of Texas than in 2015; and as of February 22, 2017, that annualized number had dropped 29% as compared to 2016, and 53% as compared to 2015.[51]

Regardless, Petitioner's supporting *amici curiae* have failed to explain how reducing the Eastern District of Texas's caseload will stop "patent trolls." To the contrary, a ruling in Petitioner's favor would only shift even more cases to other patent-heavy districts such as the District of Delaware, where 9.2% of all patent lawsuits were filed in 2016.[52] Applying a common law "place-of-incorporation" definition to § 1400(b) would do nothing to prevent "patent trolls" from filing nuisance value lawsuits in Delaware, where over a million companies—nearly half of all public corporations in the United States—are incorporated.[53]

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[51] *See* Lex Machina, http://lexmachina.com, examining cases filed from January 1, 2015 to Dec, 31, 2015; filed from January 1, 2016 to Dec 31, 2016; and filed from Jan. 1, 2017 to Feb. 22, 2016. Results were generated both nationally and for the Eastern District of Texas.

[52] *See* Kevin Benton, *New Patent Filings Down in 2016, Lowest Since 2011: Report*, Law360 (Oct. 11, 2016, 4:54 PM), https://www.law360.com/articles/850061/new-patent-filings-down-in-20).

[53] *See* Leslie Wayne, *How Delaware Thrives as a Corporate Tax Haven*, N.Y. TIMES (June 30, 2012), http://www.nytimes.com/2012/07/01/business/how-delaware-thrives-as-a-corporate-tax-haven.html.

Petitioner's policy arguments are uniformly misplaced, and afford no basis for departing in this case from Congress's express statutory specification that the definition of "reside" in 28 U.S.C. § 1391(c) controls "[f]or all venue purposes," including for patent suits under § 1400.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision below.

Respectfully submitted,

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APPENDIX

UNITED STATES CODE

1952 Edition

Containing the General and Permanent Laws of the
United States, In Force on January 2, 1953

VOLUME THREE

Title 26 – Internal Revenue Code

To

Title 33 – Navigation and Navigable Waters

Chapter 87 – District Courts; Venue

Sec.

1391. Venue generally.
1392. Defendants or property in different districts in same State.
1393. Divisions; single defendant; defendants in different divisions.
1394. Banking association's action against Comptroller of Currency.
1395. Fine, penalty or forfeiture.
1396. Internal revenue taxes.
1397. Interpleader.
1398. Interstate Commerce Commission's orders.
1399. Partition action involving United States.
1400. Patents and copyrights.
1401. Stockholder's derivative action.
1402. United States as defendant.
1403. Eminent domain.
1404. Change of venue.
1405. Creation or alteration of district or division.
1406. Cure or waiver of defects.

§ 1391. Venue generally.

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

(d) An alien may be sued in any district.

(June 25, 1948, ch. 646, § 1, 62 Stat. 935.)

§ 1400. Patents and copyrights.

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

(June 25, 1948, ch. 646, § 1, 62 Stat. 936.)

UNITED STATES CODE

1988 Edition

Containing the General and Permanent Laws of the
United States, In Force on January 3, 1989

VOLUME TWELVE

Title 27 – Intoxicating Liquors

To

Title 29 – Labor

Chapter 87 – District Courts; Venue

Sec.

1391. Venue generally.
1392. Defendants or property in different districts in same State.
[1393. Repealed.]
1394. Banking association's action against Comptroller of Currency.
1395. Fine, penalty or forfeiture.
1396. Internal revenue taxes.
1397. Interpleader.
1398. Interstate Commerce Commission's orders.
1399. Partition action involving United States.
1400. Patents and copyrights.
1401. Stockholder's derivative action.
1402. United States as defendant.
1403. Eminent domain.
1404. Change of venue.
1405. Creation or alteration of district or division.
1406. Cure or waiver of defects.
1407. Multidistrict litigation.
1408. Venue of cases under title 11.
1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.
1410. Venue of cases ancillary to foreign proceedings.
1411. Jury trials.
1412. Change of venue.

§ 1391. Venue generally.

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

(c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

(d) An alien may be sued in any district.

(e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial

district in which (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action resides, or (4) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party. The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

(June 25, 1948, ch. 646, § 1, 62 Stat. 935; Oct. 5, 1962, Pub. L. 87-748, § 2, 76 Stat. 744; Dec. 23, 1963, Pub. L. 88-234, 77 Stat. 473; Nov. 2, 1966, Pub. L. 89-714, §§ 1, 2, 80 Stat. 1111; Oct. 21, 1976, Pub. L. 94-574, § 3, 90 Stat. 2721; Oct. 21, 1976, Pub. L. 94-583, § 5, 90 Stat. 2897; Nov. 19, 1988, Pub. L. 100-702, title X, § 1013(a), 102 Stat. 4669.)

§ 1400. Patents and copyrights.

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

(June 25, 1948, ch. 646, § 1, 62 Stat. 936; Nov. 19, 1998, Pub. L. 100-702, title X, § 1020(a)(5), 102 Stat. 4671.)

UNITED STATES CODE

2012 Edition

Containing the General and Permanent Laws of the United States Enacted Through the 112th Congress

(ending January 2, 2013, the last law of which was signed on January 15, 2013)

VOLUME TWENTY-ONE

Title 27 – Intoxicating Liquors

To

Title 28 – Judiciary and Judicial Procedure

Chapter 87 – District Courts; Venue

Sec.
1390. Scope.
1391. Venue generally.
[1392, 1393. Repealed.]
1394. Banking association's action against Comptroller of Currency.
1395. Fine, penalty or forfeiture.
1396. Internal revenue taxes.
1397. Interpleader.
1398. Interstate Commerce Commission's orders.
1399. Partition action involving United States.
1400. Patents and copyrights, mask works, and designs.
1401. Stockholder's derivative action.
1402. United States as defendant.
1403. Eminent domain.
1404. Change of venue.
1405. Creation or alteration of district or division.
1406. Cure or waiver of defects.
1407. Multidistrict litigation.
1408. Venue of cases under title 11.
1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.
1410. Venue of cases ancillary to foreign proceedings.
1411. Jury trials.
1412. Change of venue.
1413. Venue of cases under chapter 5 of title 3.

§ 1391. Venue generally.

(a) APPLICABILITY OF SECTION.—Except as otherwise provided by law—

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) VENUE IN GENERAL.—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

(c) RESIDENCY.—For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

(2) an entity with the capacity to sue and be sued in its common name under applicable law,

whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

(d) RESIDENCY OF CORPORATIONS IN STATES WITH MULTIPLE DISTRICTS.—For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in the State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district in which it has the most significant contacts.

(e) ACTIONS WHERE DEFENDANT IS OFFICER OR EMPLOYEE OF THE UNITED STATES.—

(1) IN GENERAL.—A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought

in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

(2) SERVICE.—The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) CIVIL ACTIONS AGAINST A FOREIGN STATE.—A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an

agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

(g) MULTIPARTY, MULTIFORM LITIGATION.—A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

(June 25, 1948, ch. 646, 62 Stat. 935; Pub. L. 87–748, § 2, Oct. 5, 1962, 76 Stat. 744; Pub. L. 88–234, Dec. 23, 1963, 77 Stat. 473; Pub. L. 89–714, §§ 1, 2, Nov. 2, 1966, 80 Stat. 1111; Pub. L. 94–574, § 3, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 94–583, § 5, Oct. 21, 1976, 90 Stat. 2897; Pub. L. 100–702, title X, § 1013(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101–650, title III, § 311, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102–198, § 3, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 102–572, title V, § 504, Oct. 29, 1992, 106 Stat. 4513; Pub. L. 104–34, § 1, Oct. 3, 1995, 109 Stat. 293; Pub. L. 107–273, div. C, title I, § 11020(b)(2), Nov. 2, 2002, 116 Stat. 1827; Pub. L. 112–63, title II, § 202, Dec. 7, 2011, 125 Stat. 763.)

§ 1400. Patents and copyrights, mask works, and designs.

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be

instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

(June 25, 1948, ch. 646. 62 Stat. 936; Pub. L. 100-702, title X, § 1020(a)(5), Nov. 19, 1988, 102 Stat. 4671; Pub. L. 105-304, title V, §503(c)(1), (2), Oct. 28, 1998, 112 Stat. 2917; Pub. L. 106-44, §2(a), Aug. 5, 1999, 113 Stat. 223.)